

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
AGREEMENT FOR PROFESSIONAL SERVICES
KUTAK ROCK, LLP

THIS AGREEMENT is made and entered into as of the 23rd day of September 2015, by and between the MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY ("Authority"), a public body corporate and politic, located at [REDACTED] and KUTAK ROCK LLP ("Contractor"), a limited liability partnership with offices located nationwide, to provide the Authority with training and updated manuals pertaining to boardmanship basics. The Authority and the Contractor are collectively referred to as the Parties in this Agreement.

WITNESSETH THAT:

The Authority and the Contractor do mutually agree as follows:

1. **Services Rendered/Scope of Work.** The Contractor shall, in a satisfactory and proper manner as determined by the Authority, render the services described in Exhibit A – Services Rendered, which is attached and incorporated into this Agreement.
2. **Term.** TIME IS OF THE ESSENCE to this Agreement in connection with the delivery of the products and services described in the Exhibit A – Services Rendered. The performance of project work shall begin on or after the execution of this Agreement by the Authority and shall be completed no later than November 30, 2015.
3. **Agreement Price and Payment.**
 - a. The total amount to be paid by the Authority to the Contractor under this Agreement shall not exceed **Four Thousand Dollars (\$4,000)** for the provision of training and updated manuals as outlined in Exhibit A - Services Rendered attached and incorporated into this Agreement.
 - b. Final payment shall be made upon the satisfactory completion and submission of all required work and documents.
 - c. Payment will be made within thirty (30) days of course completion upon presentation of an invoice by the Contractor. Invoices shall be submitted to [REDACTED]

Director, Legal Affairs Division, [REDACTED]

[REDACTED], and should include the following:

- i. Authority's contract number as shown above.
- ii. Specific service performed.
- iii. Amount paid to date on this Agreement.
- iv. Number and amount of this invoice.
- v. Contractor's Federal Tax ID (W-9 Form is attached as Exhibit C).

4. **Records Maintenance and Disclosure.** The Contractor shall maintain such personnel records as are deemed necessary by the Authority to assure a proper account for all engagement costs. These records will be made available for audit purposes to the Authority and the Auditor General of the State of Michigan, or any authorized representative, and will be retained for three years after the expiration of the Agreement unless permission to destroy them is granted by both the Authority and the State of Michigan. The Contractor and its subcontractors shall properly maintain such project records and accounts as are prescribed by the Authority. These records shall include but are not limited to: documentation of the receipt and disbursement of all funds involved in this Agreement; documentation of compliance with the terms of this Agreement; and documentation of employment practices and procedures.

The Contractor shall be responsible for the maintenance and retention of proper records by its subcontractors. Upon request of the Authority, the Contractor and its subcontractors shall provide for and facilitate the Authority's access to records maintained in connection with this Agreement. Each record must be retained and be available for inspection for three (3) years after final reimbursement is made by the Authority under this Agreement and all pending matters are closed. However, if any records are involved in any litigation, claim, or audit which arises before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved or until the end of the three-year period, whichever is later.

All records pertinent to this grant are subject to public disclosure under the federal Freedom of Information Act, 5 USC §552, unless determined to be exempt under that statute, the National Historic Preservation Act of 1966; 16 USC §470 *et seq.*, as amended, and the Michigan Freedom of Information Act; 1976 PA 442; MCL 15.231 *et seq.*

5. **Nondiscrimination.** In accordance with Acts No. 220 and 453 of the Public Acts of 1976, as amended, the Contractor agrees in connection with the performance of services under this Agreement not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, marital status or handicap. Breach of this covenant may be regarded as a material breach of this Agreement.
6. **Failure to Perform.** In the event the Contractor fails to perform services required under this Agreement or performs services required under this Agreement in an improper manner, the parties agree that damages that the Authority will sustain will be substantial but will be difficult, if not impossible, to ascertain; therefore, the parties agree that in the event of the Contractor's failure to perform services as outlined in this Agreement or the Contractor's performs services in an improper manner, the Authority shall be entitled to a credit against the Contractor's current unpaid billings for amount previously paid to the Contractor after the Contractor's non-performance or improper performance. The damages for the Contractor's inadequate or improper performance shall not be exclusive but shall be in addition to any other damages which the Authority may be entitled to for the Contractor's default under this Agreement.
7. **Assigned Personnel.** The Contractor acknowledges that the personnel it will assign to perform the services under this Agreement shall possess the requisite education, competence and experience to perform such services. The Contractor further acknowledges and agrees that such personnel may be subject to the evaluation and approval of the Authority, who shall retain the right to determine the sufficiency of the education, competence and experience of the personnel assigned to perform the services identified in the Exhibit A – Services Rendered attached and incorporated into this Agreement.
8. **Project Representatives.** The Contractor designates the following individual as project representative for all matters concerning this Agreement:

[REDACTED]
Kutak Rock, LLP
[REDACTED]

The Authority designates the following individual as project representative to be the initial point of contact for all matters concerning this Agreement:



Except for changes to the performance schedule, the designated project representatives shall have no authority to make promises or binding obligations either for the Authority or the Contractor, as such authority rests with the duly authorized persons executing this Agreement on behalf of the respective parties.

9. **Employees of Contractor or Key Persons.**

- a. **Definition of Key Person.** "Key Persons" shall be defined in this Agreement as individuals who perform services pursuant to this Agreement and (a) sign this Agreement on behalf of the Contractor and/or (b) are listed in Exhibit B of this Agreement.
- b. **Performance of Services.** The Contractor acknowledges that only Key Persons shall perform the services under this Agreement. Key Persons include the names of all employees, agents and independent contractors of the Contractor who perform or render services pursuant to this Agreement.
- c. **Exhibit B--Certificate Verifying Key Persons.** Prior to executing this Agreement, the Contractor shall provide to the Authority the names of all Key Persons by completing Exhibit B, which is the Certificate Verifying Key Persons of the Contractor or a subcontractor, if applicable ("Certificate"). In the event the Contractor fails to provide to the Authority the names of any Key Persons, the parties shall consider the signatory for the Contractor to be the sole Key Person for the Contractor. If the Contractor (or subcontractor) wishes to add an agent, employee, or independent contractor as a Key Person during the term of this Agreement, the Contractor shall complete and submit to the Authority a Certificate for that employee, agent, or independent contractor. (See Section 12 of this Agreement.)
- d. **2007 PA 95, MCL 38.68c.** The Contractor and its employees, agents, and independent contractors acknowledge 2007 PA 95, MCL 38.68c, as amended, requires retirees of the State Employees Retirement System (i.e., former state

employees who have pensions with the State of Michigan) ("Pensioned Retirees") who become employed by the State, either directly or indirectly through a contractual arrangement with another party, on or after October 1, 2007, to forfeit their state pension for the duration of their reemployment. **EFFECTIVE OCTOBER 2, 2010, "EMPLOYED BY THE STATE" INCLUDES ENGAGEMENTS OF PENSIONED RETIREES AS INDEPENDENT CONTRACTORS. PENSIONED RETIREES WHO PROVIDE OR RENDER SERVICES UNDER THIS AGREEMENT AS KEY PERSONS MUST FORFEIT THEIR PENSIONS DURING THE TERM OF THIS AGREEMENT IF THE PENSIONED RETIREE (A) IS EMPLOYED BY THE STATE, (B) IS EMPLOYED BY THE CONTRACTOR, (C) HOLDS AN OWNERSHIP INTEREST IN THE CONTRACTOR, (D) IS A SUBCONTRACTOR OF THE CONTRACTOR, OR (E) IS AN EMPLOYEE OF A SUBCONTRACTOR.**

THE CONTRACTOR ACKNOWLEDGES AND AGREES TO SECURE THE AUTHORITY'S PRIOR WRITTEN CONSENT BEFORE RETAINING, EMPLOYING OR SUBCONTRACTING WITH A PENSIONED RETIREE TO PERFORM SERVICES UNDER THIS AGREEMENT. RETAINING, EMPLOYING OR SUBCONTRACTING WITH A PENSIONED RETIREE TO PERFORM SERVICES UNDER THIS AGREEMENT WITHOUT THE AUTHORITY'S PRIOR WRITTEN CONSENT SHALL BE (A) A MATERIAL BREACH OF THIS AGREEMENT AND (B) GROUNDS FOR THE AUTHORITY TO TERMINATE THIS AGREEMENT AND PROVIDE NOTICE TO THE OFFICE OF RETIREMENT SERVICES THAT THE RETIREE HAS RECEIVED PENSION PAYMENTS AND PAYMENTS DIRECTLY OR INDIRECTLY THROUGH THIS AGREEMENT.

IF THE CONTRACTOR EMPLOYS OR RETAINS A PENSIONED RETIREE AS A KEY PERSON OR SUBCONTRACTS WITH A PENSIONED RETIREE, THE CONTRACTOR MUST SUBMIT A COPY OF THE PENSIONED RETIREE'S DIRECTIONS TO THE OFFICE OF RETIREMENT SERVICES ("ORS") TO WITHHOLD THE RETIREE'S PENSION PAYMENTS DURING THE TERM OF THIS AGREEMENT.

THE CONTRACTOR AND THE PENSIONED RETIREES IT EMPLOYS ACKNOWLEDGE AND AGREE THAT NEITHER THE STATE, NOR THE

AUTHORITY, NOR ITS EMPLOYEES, DIRECTORS, AGENTS NOR BOARD SHALL BE LIABLE TO THE CONTRACTOR OR PENSIONED RETIREE FOR THE FORFEITURE OF THE RETIREE'S PENSION PAYMENTS DURING OR AFTER THE TERM OF THIS AGREEMENT. THE CONTRACTOR AND PENSIONED RETIREE ACKNOWLEDGE THAT THE AUTHORITY HAS NO RESPONSIBILITY TO CONFIRM WHETHER THE ORS HAS OR WILL FORFEIT THE RETIREE'S PENSION.

10. **Conflicts of Interest.** Prior to the execution of this Agreement, the Contractor acknowledges and confirms that it has delivered to the Authority a written list of all interests of the Contractor, or its officers and employees, which may create conflicts between the interests of those entities or parties and the interests of the Authority. The Contractor acknowledges that its employees, members, shareholders, agents, or independent contractors prior to or during the term of this Agreement are not employees of the State of Michigan or its units. Should a conflict of interest arise during the term of this Agreement, the Contractor shall contact the Authority's Director of Legal Affairs immediately and describe in detail the conflict of interest.
11. **Participation in Other Authority Programs.** With the exception of providing services to the Authority as described in Exhibit A – Services Rendered of this Agreement, neither the Contractor nor the Contractor's employees, agents, officers, directors, shareholders or members will participate in Authority housing programs or do business with the Authority under any program in which the Authority has a direct or indirect relationship without securing approval from the Authority's Director of Legal Affairs.
12. **Indemnity.** The Contractor and the Authority mutually agree that neither will indemnify the other party and further agree that each party will be responsible for its own actions or omissions that result in any claims, damages or expenses, including reasonable attorneys' fees, arising or alleged to arise in whole or in part from damage or injury caused by or resulting from the party's performance of this Agreement.
13. **Delegation to Subcontractors or Independent Contractors.** Delegation of duties or obligations under this Agreement to a subcontractor or independent contractor without the prior written consent of the Authority shall be a material breach of this Agreement. In the event a subcontractor is approved by the Authority's Director of Legal Affairs, the Key Persons for

the Contractor shall be subject to the requirements set forth in Section 9 (Employees of Contractor or Key Persons) of this Agreement, including, but not limited to, the restrictions on pension payments if a pensioned retiree is a Key Person of the subcontractor or an independent contractor retained by the Contractor. SUBCONTRACTING WORK TO BE PERFORMED UNDER THIS AGREEMENT WITHOUT THE PRIOR WRITTEN CONSENT OF AN AUTHORIZED OFFICER OF THE AUTHORITY SHALL BE A MATERIAL BREACH OF THIS AGREEMENT.

- a. The Contractor shall not delegate any duties or obligations under this Agreement to a subcontractor or independent contractor unless the Authority's Director of Legal Affairs has given written consent to the delegation. When submitting the request to subcontract, the Contractor shall include the following information about the subcontractor:
 - i. Name of Subcontracting Firm.
 - ii. Work that will be subcontracted.
 - iii. Names of individuals who will perform the subcontracted work.
 - iv. List any and all Authority programs through which the subcontractor or the subcontractor's employees, officers, directors, members, shareholders or officeholders participate.
- b. In the event the Contractor retains a subcontractor in accordance with Section 13a above, the Contractor shall insert into each subcontract executed in connection with this Agreement appropriate and enforceable provisions requiring compliance with this Agreement by the subcontractor and the persons acting for it. Throughout the performance of any subcontracts, the Contractor shall monitor and verify the compliance of all subcontractors and persons acting for them and shall immediately take any affirmative or remedial measures prescribed by the Authority or otherwise deemed necessary in the opinion of the Contractor for enforcing compliance under such subcontracts.
- c. Pursuant to 1980 PA 278; MCL 423.322 *et seq.*, the Contractor, in performing this Agreement, shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name has been listed in the register maintained by the State of Michigan, Department of Licensing and Regulatory Affairs, of employees who have been found in contempt of court by a federal court of appeals, on not less than three occasions involving different violations during the preceding seven years, for failing to correct an unfair labor practice as prohibited by Section 8 of chapter 372 of the National Labor Relations Act, 29 USC §158. The Authority may void this Agreement if the name

of the Contractor or the name of a subcontractor, manufacturer, or supplier sued by the Contractor in performing this Agreement subsequently appears in the register during the period of this Agreement.

- d. The Contractor certifies, by signing this Agreement, that it possesses business integrity and that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in grants or contracts by any federal, state, or local department or agency.

- 14. **Independence of Contractors.** The Authority shall retain the Contractor as an independent contractor, and the Contractor shall accept such independent contractor relationship, upon the terms and conditions set forth in this Agreement. Nothing in this Agreement shall be construed to create the relationship of employer and employee between the Authority and the Contractor or any of its employees or agents. The Contractor, its employees and contractors, shall be deemed at all times and for all purposes to be independent contractors. The Contractor acknowledges and agrees that all payments by the Authority to the Contractor shall be made without deduction for federal, state or local income taxes, social security taxes and similar items, and that the Contractor shall be solely responsible to report income under this Agreement to the Internal Revenue Service and other appropriate taxing authorities and to pay such taxes (including, without limitation, being solely responsible to make periodic estimated payments of such taxes in accordance with applicable law). The Contractor further acknowledges and agrees that all payments under this Agreement to the Contractor by the Authority shall be reported to the Internal Revenue Service and other appropriate taxing authorities on Form 1099 (or equivalent or replacement forms).
- 15. **Ownership of Documents and Reports.** Training materials provided by the Contractor may not be reproduced without the express written permission of the Contractor. Training materials delivered to the Authority under this Agreement shall become and be the property of the Authority and may be reproduced only after seeking and receiving written permission from the Contractor.
- 16. **Course Recordings.** The course presentation is the property of the Contractor and may not be recorded in any form without the prior express written consent of the Contractor.

17. **Disclosure of Information.** Neither the Contractor nor its agents or contractors, shall disclose information or documents created or maintained in connection with this Agreement to anyone, without the prior consent of the Authority. Neither the Contractor nor its agents or contractors, shall use information or documents created or maintained in connection with this Agreement to further any private interest, other than as contemplated by this Agreement, without the prior consent of the Authority.
18. **Termination of Agreement.** If federal funds approved or obligated by the Authority in connection with this project are at any time rendered unavailable to the Authority, or if state funds intended for expenditure to support this Agreement are made unavailable by the Michigan State Legislature or some other state funding authority, the Authority shall then have the right to terminate this Agreement by the giving of a written notice, the basis, and the effective date of the termination to the Contractor.
19. **Michigan Law.** This Agreement shall be governed by the laws of the State of Michigan and shall be binding upon the Contractor's successors, assigns, and legal representatives. All records pertinent to this Agreement are subject to public disclosure under the Michigan Freedom of Information Act; 1976 PA 442; MCL 15.231 *et seq.* The Contractor shall insert the provisions of this section into any subcontract entered into to accomplish the terms of this Agreement.

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IN WITNESS WHEREOF the Authority and the Contractor have executed this Agreement as of the date first above written.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

By: 

For  Kevin Eisenheimer, Executive Director

KUTAK ROCK, LLP

By: 

CONTRACT NO. 15-02-LA

**MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
AGREEMENT FOR PROFESSIONAL SERVICES
KUTAK ROCK, LLP.**

EXHIBIT A

SERVICES RENDERED

1. **Objectives.** The Contractor will provide training based on national best practices for board members of housing finance authorities. The training includes (a) preparation such as phone calls with Authority staff to target needs and issues unique to the Authority's Board and (b) updated manuals on boardmanship.
2. **Schedule.** The Contractor will provide training for Authority Board members on Thursday, October 8, 2015 at the Authority, [REDACTED]
3. **Location & Equipment.** Facilities and equipment shall be provided by the Authority. All necessary course and teaching materials including updated manuals, pamphlets and all books, handouts, and paperwork related to Boardmanship Basics shall be provided by the Contractor.